

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

TITO T BOLDEN,

Plaintiff,

v.

RICKY HENRY ET AL.,

Defendants.

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CIVIL ACTION NO. 5:16-CV-00096-RWS

**ORDER ADOPTING REPORT AND RECOMMENDATION OF THE
UNITED STATES MAGISTRATE JUDGE**

The Plaintiff Tito Bolden, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights in the Texas Department of Criminal Justice, Correctional Institutions Division. The Court referred this matter to the Honorable Caroline M. Craven, United States Magistrate Judge, for consideration pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

In February of 2017, the Plaintiff's stepmother contacted the Court to state Plaintiff had passed away. *See* Docket No. 45. The stepmother advised the clerk that the family was in the process of hiring an attorney to proceed with the case. Since that time, there has been no further contact from Plaintiff's family and no action taken on the case.

On July 26, 2017, the Magistrate Judge issued a Report recommending the lawsuit be dismissed without prejudice for failure to prosecute (Docket No. 45). No objections have been filed. Accordingly, the Court reviews the Magistrate Judge's Report and Recommendation for clear error. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989); 28 U.S.C. §

636(b)(1); Fed. R. Civ. P. 72(b)(3). After reviewing the Report and pleadings in this matter, the Court concludes that the Magistrate Judge did not clearly err in finding that Plaintiff's estate has had ample time in which pursue the case and that the interest of justice are best served by a dismissal of this lawsuit without prejudice.

According, the Court **ADOPTS** the Report of the Magistrate Judge (Docket No. 45) as the opinion of the Court. It is further

ORDERED the above-styled civil action is **DISMISSED WITHOUT PREJUDICE** for failure to prosecute. Finally, it is

ORDERED any and all motions which may be pending in this civil action are hereby **DENIED**.

SIGNED this 23rd day of August, 2017.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE